

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

D. THOMAS ARCHULETA *et al.*,

Plaintiffs,

v.

Civ. No. 16-801 JCH/KK

ERIC MONTOYA *et al.*,

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the parties' Joint Motion to Approve Minor Settlement (Doc. 31) ("Joint Motion"), filed December 29, 2016, and the Guardian ad Litem's Report pertaining to Proposed Settlement for D.A., a Minor, and D.A., a Minor (Doc. 30) ("GAL's Report"), filed December 27, 2016. Having reviewed the Joint Motion and the GAL's Report, and having held a sealed fairness hearing on January 31, 2017, (Doc. 36), I propose to find that the proposed settlement of the minor Plaintiffs' claims is fair and reasonable, and recommend that the Court ADOPT the GAL's Report and GRANT the Joint Motion.

In reviewing the fairness of the proposed settlement, the following factors have guided my analysis:

(1) whether the settlement terms were fairly and honestly negotiated; (2) whether serious questions of law or fact exist, placing the ultimate outcome of litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of a greater future recovery after protracted and expensive litigation; and, (4) whether the settlement is fair and reasonable in its effect.

Ball v. DATS Trucking, Inc., Civ. No. 11-94 JB/WPL, Doc. 61 at 4 (D.N.M. filed Dec. 11, 2012)

(citing *Jones v. Nuclear Pharm., Inc.*, 741 F.2d 322, 324 (10th Cir. 1984)).

I have reviewed the file, the Joint Motion, the settlement agreement and release attached thereto, and the GAL's Report. (Docs. 30, 31.) I have familiarized myself with the factual and legal issues, and considered counsel's representations and the sworn testimony of Plaintiff D. Thomas Archuleta, the minor Plaintiffs' parent and next friend, at the sealed fairness hearing on January 31, 2017. The GAL's Report reflects that he conducted a reasonable and thorough investigation. In light of the record thus developed, I propose to find that the proposed settlement was negotiated honestly and fairly, that serious questions of law and fact place the ultimate outcome of the litigation in doubt, that the value of a swift and certain recovery outweighs the possibility of greater future relief after lengthy and costly litigation, and that the settlement is fair and reasonable in its effect in light of Plaintiffs' claims and damages, Defendants' defenses, the burdens of ongoing litigation, and the unpredictability of a jury trial.

I specifically propose to find that the proposed distribution of the settlement proceeds is fair and reasonable, and that the funds to be disbursed to each minor Plaintiff will be reserved for that minor Plaintiff's sole benefit and use. Further, the settlement agreement and release between Plaintiffs and Defendants sets forth customary terms and conditions; the attorneys' fees to be deducted from the settlement proceeds are considerably less than the standard contingency fee; and, costs will not be deducted from the settlement proceeds. As such, I propose to find that these terms of the proposed settlement are eminently fair and reasonable.

For all of the above reasons, I recommend that the Court: (1) ADOPT the Guardian ad Litem's Report pertaining to Proposed Settlement for D.A., a Minor, and D.A., a Minor (Doc. 30); (2) FIND that the proposed settlement involving minors is fair and reasonable; (3) GRANT the parties' Joint Motion to Approve Minor Settlement (Doc. 31); (4) APPROVE the settlement

of the minor Plaintiffs' claims; (5) RELEASE the Guardian ad Litem from his duties in this case; and, (6) DISMISS WITH PREJUDICE Plaintiffs' complaint against Defendants.



KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.